

REMARKS

The present filing is responsive to the Office Action.

Summary of the Response

Claims 1 and 19 have been amended. Claims 16 and 17 have been canceled. Claims 1-15 and 18-20 remain pending in this application. Reexamination and reconsideration of the present application as amended are respectfully requested.

Premature Finality of Action

In the present action, the Examiner asserted new grounds of rejection. The Examiner also asserted that Applicant's earlier amendment in the previous response necessitated the new grounds of rejection presented in the present action. However, Applicant did not substantively amend the claims in the previous response. Applicant merely amended the independent claims 1 and 19 to address 112 issues raised by the Examiner, by clarifying the specific claim terms noted by the Examiner. As Applicant explained in the previous response, the noted claim terms were clear as originally presented in light of the specification, but Applicant nevertheless amended the claims to provide additional clarification, in the interest of forwarding prosecution of this case.

Applicant respectfully submits that given the disclosure of the present invention in the specification, the Examiner could have conducted an adequate prior art search and substantive examination of the original claims even in the absence of the clarifying amendments, and could have set forth the present grounds of rejection in the previous action. In fact, the Examiner is relying on the same reference as in the previous action, to currently reject the claims based on the

new grounds in the present action. Even in the presence of 112 issues, the Examiner should have presented the rejections in the prior action based on the understanding of the claims in light of the specification. Instead, as Applicant noted in the response to the prior action, the Examiner failed to set forth proper rejections in the prior action, even based on the Examiner's then understanding of the claims. (For example, the Examiner failed to point out the structure in the cited reference that corresponds to the recited capillary cartridge; see page 11, first full paragraph.) It would not be fair to the Applicant to make the present action final, which effectively prevented Applicant from making substantive claim amendments to cover the rejections.

Applicant respectfully requests withdrawal of the finality of the present action, and should the Examiner further reject the present application, designating the next action as non-final, so that Applicant can be afforded a full opportunity to respond to the Examiner's rejections by appropriate claim amendments.

Claim Rejections Under 35 USC 102(e)

Claims 1-20 are rejected under 35 USC 102(e) as being anticipated by Hedberg (US20020092770). This rejection is respectfully traversed.

Independent claim 1 has been amended to include the limitations of dependent claim 17, including intervening dependent claim 16. Claim 17 (now claim 1 as amended), recites: "a support structure supporting the cartridge in relation to the external component, wherein the support structure comprises a location device and an actuator that biases the location device against the capillary cartridge to positively position the capillary cartridge in relation to the

external component; at least one biasing device supported by the support structure, the biasing device supporting and biasing the external component against the associated component of the capillary cartridge, thereby providing the support element to the cartridge to conduct the bio-analytical process; and a controller controlling operation of the biasing device and the location device, wherein the controller is configured to activate the location device to positively position the capillary cartridge **prior to** activating the biasing device to bias the external component against the associated component of the capillary cartridge.” Claim 17 (now claim 1 as amended) therefore requires the controller to activate the location device to positively position the capillary cartridge **prior to** activating the biasing device to bias the external component against the associated component of the capillary cartridge. Nowhere in Hedberg is any disclosure of the recited controller having the recited function. In the present action, the Examiner referred to [0011] in Hedberg to find correspondence in structure to support the anticipation rejection. However, nowhere in [0011] in Hedberg contains any discussion of first activating the location device to positively position the capillary cartridge prior to activating the biasing device to bias the external component against the associated component of the capillary cartridge. Instead, from a fair and reasonable reading of Hedberg, it discloses a cartridge component 102 that is transportable by a robotic arm to access samples in fixed containers. As such in Hedberg, no external components (that provides to the associated component of the capillary cartridge a support element required by a bio-analytical process for a bio-sample) would be biased against the capillary 108, 109 held in the cartridge component 102 **after** the coupling of the cartridge component 102 to the rest of the pickup assembly 34.

Given the absence of the recited structure, Hedberg does not anticipate claim 1 and all its dependent claims, and the Examiner must withdraw the rejection.

Independent claim 19 has been similarly amended. For at least the same reasons as claim 1, Hedberg is deficient to anticipate claim 19 and its dependent claim 20.

CONCLUSION

The Examiner is invited to call the undersigned representative to discuss any outstanding issues that may not have been adequately addressed in this response.

The Assistant Commissioner is hereby authorized to charge any additional fees under 37 C.F.R. §§ 1.16 and 1.17 that may be required by this transmittal and associated documents, or to credit any overpayment to **Deposit Account No. 501288** referencing the attorney docket number of this application.

Respectfully submitted,

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